

Senate Bill No. 539

CHAPTER 338

An act to amend Sections 2841, 2859, 2862, 2866, 2872.2, 2873, 2878.1, 2880, 2881, 2881.1, 2882, 2883, 4501, 4503, 4510.1, 4511, 4511.2, 4521.2, 4530, 4531, and 4532 of, and to repeal and amend Section 2847 of, the Business and Professions Code, relating to nursing.

[Approved by Governor September 26, 2011. Filed with
Secretary of State September 26, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

SB 539, Price. Nursing.

(1) Existing law, until January 1, 2012, creates within the Department of Consumer Affairs, the Board of Vocational Nursing and Psychiatric Technicians of the State of California. Existing law, until January 1, 2012, requires the board to select an executive officer to perform duties delegated by the board. Under existing law, boards scheduled for repeal are required to be evaluated by the Joint Sunset Review Committee.

This bill would extend the operation of those provisions until January 1, 2016, and would specify that the board would be subject to review by the appropriate policy committees of the Legislature.

(2) Existing law requires the Board of Vocational Nursing and Psychiatric Technicians of the State of California to inspect all schools of vocational nursing and psychiatric technicians for purposes of accreditation or determining compliance with prescribed standards.

This bill would instead require the inspection or review of those schools for the purposes described above.

(3) Existing law requires an applicant for a vocational nurse license or a psychiatric technician's license to have successfully completed specified courses of studies from a school accredited by the Board of Vocational Nursing and Psychiatric Technicians of the State of California. Existing law requires an employer of a licensed vocational nurse or psychiatric technician to report to the board the suspension or termination for cause of the licensed vocational nurse or psychiatric technician. A violation by any person of any of the provisions governing these professions is a misdemeanor.

This bill would instead require an applicant for a vocational nurse license or a psychiatric technician's license to have successfully completed specified courses of studies from a school approved by the board. The bill would also require an employer of a licensed vocational nurse or psychiatric technician to report to the board the resignation for cause, as defined, of the licensed vocational nurse or psychiatric technician and would require an employment agency or nursing registry to report to the board the rejection from assignment of the licensed vocational nurse or psychiatric technician. By

revising the definition of a crime, this bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 2841 of the Business and Professions Code is amended to read:

2841. (a) There is in the Department of Consumer Affairs a Board of Vocational Nursing and Psychiatric Technicians of the State of California, consisting of 11 members.

(b) Within the meaning of this chapter, “board,” or “the board,” refers to the Board of Vocational Nursing and Psychiatric Technicians of the State of California.

(c) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date. Notwithstanding any other provision of law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 2. Section 2847 of the Business and Professions Code, as amended by Section 6 of Chapter 33 of the Statutes of 2008, is repealed.

SEC. 3. Section 2847 of the Business and Professions Code, as added by Section 6 of Chapter 35 of the Statutes of 2008, is amended to read:

2847. (a) The board shall select an executive officer who shall perform duties as are delegated by the board and who shall be responsible to it for the accomplishment of those duties.

(b) The person selected to be the executive officer of the board shall be a duly licensed vocational nurse under this chapter, a duly licensed professional nurse as defined in Section 2725, or a duly licensed psychiatric technician. The executive officer shall not be a member of the board.

(c) With the approval of the Director of Finance, the board shall fix the salary of the executive officer.

(d) The executive officer shall be entitled to traveling and other necessary expenses in the performance of his or her duties. He or she shall make a statement, certified before a duly authorized person, that the expenses have been actually incurred.

(e) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

SEC. 4. Section 2859 of the Business and Professions Code is amended to read:

2859. The practice of vocational nursing within the meaning of this chapter is the performance of services requiring those technical, manual skills acquired by means of a course in an approved school of vocational nursing, or its equivalent, practiced under the direction of a licensed physician, or registered professional nurse, as defined in Section 2725.

A vocational nurse, within the meaning of this chapter, is a person who has met all the legal requirements for a license as a vocational nurse in this state and who for compensation or personal profit engages in vocational nursing as the same is hereinabove defined.

SEC. 5. Section 2862 of the Business and Professions Code is amended to read:

2862. Vocational nursing services may be rendered by a student enrolled in an approved school of vocational nursing when these services are incidental to his or her course of study.

SEC. 6. Section 2866 of the Business and Professions Code is amended to read:

2866. An applicant for a licensed vocational nurse license shall comply with each of the following:

- (a) Be at least 17 years of age.
- (b) Have successfully completed at least an approved course of study through the 12th grade or the equivalent thereof as specified by the board.
- (c) Have successfully completed the prescribed course of study in an approved school of vocational nursing or have graduated from a school which, in the opinion of the board, maintains and gives a course which is equivalent to the minimum requirements for an approved school of vocational nursing in this state.
- (d) Not be subject to denial of licensure under Section 480.

SEC. 7. Section 2872.2 of the Business and Professions Code is amended to read:

2872.2. An applicant for license by examination shall submit a written application in the form prescribed by the board.

Provided that the application for licensure by examination is received by the board no later than four months after completion of a board approved nursing program and approval of the application, the board may issue an interim permit authorizing the applicant to practice vocational nursing pending the results of the first licensing examination, or for a period of nine months, whichever occurs first.

If the applicant passes the examination, the interim permit shall remain in effect until an initial license is issued by the board or for a maximum period of six months after passing the examination, whichever occurs first. If the applicant fails the examination, the interim permit shall terminate upon notice by certified mail, return receipt requested, or if the applicant fails to receive the notice, upon the date specified in the interim permit, whichever occurs first.

A permittee shall function under the supervision of a licensed vocational nurse or a registered nurse, who shall be present and available on the premises during the time the permittee is rendering professional services.

The supervising licensed vocational nurse or registered nurse may delegate to the permittee any function taught in the permittee's basic nursing program.

An interim permittee shall not use any title or designation other than vocational nurse interim permittee or "V.N.I.P."

SEC. 8. Section 2873 of the Business and Professions Code is amended to read:

2873. Any person possessing either the education or the experience, or any combination of both the education and the experience, equivalent to that acquired in an approved school of vocational nursing may be licensed as a vocational nurse under the provisions of this chapter, provided that he or she successfully demonstrates to the board that he or she possesses the necessary qualifications, and successfully passes the examinations or tests as may from time to time be required by the board.

SEC. 9. Section 2878.1 of the Business and Professions Code is amended to read:

2878.1. (a) If a licensed vocational nurse has knowledge that another person has committed any act prohibited by Section 2878, the licensed vocational nurse shall report this information to the board in writing and shall cooperate with the board in furnishing information or assistance as may be required.

(b) Any employer of a licensed vocational nurse shall report to the board the suspension or termination for cause, or resignation for cause, of any licensed vocational nurse in its employ. In the case of licensed vocational nurses employed by the state, the report shall not be made until after the conclusion of the review process specified in Section 52.3 of the California Code of Regulations and *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (d) and shall not be subject to discovery in civil cases.

(c) An employment agency or nursing registry shall report to the board the rejection from assignment of a licensed vocational nurse by a health facility or home health care provider due to acts that would be cause for suspension or termination as described in subdivision (d).

(d) For purposes of the section, "suspension, termination, or resignation for cause" or "rejection from assignment" are defined as suspension, termination, or resignation from employment, or rejection from assignment, for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice vocational nursing.

(2) Unlawful sale of a controlled substance or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Falsification of medical records.

(5) Gross negligence or incompetence.

(6) Theft from patients or clients, other employees, or the employer.

(e) Failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed ten thousand dollars (\$10,000) per violation.

(f) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this chapter.

(g) The board shall implement this section contingent upon the necessary funding in the annual Budget Act.

(h) For purposes of this section, “employer” includes employment agencies and nursing registries.

SEC. 10. Section 2880 of the Business and Professions Code is amended to read:

2880. The board shall prepare and maintain a list of approved schools of vocational nursing in this state whose graduates, if they have the other necessary qualifications provided in this chapter, shall be eligible to apply for a license to practice vocational nursing in this state.

SEC. 11. Section 2881 of the Business and Professions Code is amended to read:

2881. An approved school of vocational nursing is one which has been approved by the Board of Vocational Nursing and Psychiatric Technicians of the State of California, gives a course of instruction in vocational nursing of not less than 1,530 hours or 50 semester units approved by the board pursuant to Section 2882 whether the same be established by the State Board of Education, other educational institutions, or other public or private agencies or institutions and is affiliated or conducted in connection with one or more hospitals.

One hour of instruction for purposes of computing the total hours of instruction or for calculating semester units as specified in this section shall consist of not less than 50 minutes of actual class time.

SEC. 12. Section 2881.1 of the Business and Professions Code is amended to read:

2881.1. The board shall deny the application for approval made by, and shall revoke the approval given to, any school of vocational nursing that does not give to student applicants credit, in the field of nursing, for previous education and the opportunity to obtain credit for other acquired knowledge by the use of challenge examinations or other methods of evaluation.

The board shall prescribe, by regulation, the education for which credit is to be given and the amount of credit that is to be given for each type of education, including the amount of credit to be given to a certified nurse assistant, a nurse assistant who has provided direct nursing services in health facilities, and an applicant who has successfully completed equivalent courses offered by a secondary school that is approved by the State Department of Education in any state or by a nationally recognized regional accrediting body. These courses shall be assessed for equivalency by the vocational nursing school.

SEC. 13. Section 2882 of the Business and Professions Code is amended to read:

2882. The course of instruction of an approved school of vocational nursing shall consist of not less than the required number of hours of instruction in such subjects as the board may from time to time by regulation determine, together with the required number of hours in the care of medical, surgical, obstetrical patients, sick children, and such other clinical experience as from time to time may be determined by the board.

The board shall, by regulation, provide for the approval of courses of instruction expressed in hours of instruction, or academic units, or which require satisfactory demonstration of skills and behavioral competencies.

SEC. 14. Section 2883 of the Business and Professions Code is amended to read:

2883. It shall be the duty of the board, through an official representative, to inspect or review all schools of vocational nursing in this state at such times as the board shall deem necessary. Written reports of the inspection or review shall be made to the board, which shall thereupon approve the schools of vocational nursing that meet the requirements provided by the board.

Upon receiving the report of the representative, if the board determines that any approved school of vocational nursing is not maintaining the standard required by the board, notice thereof in writing specifying the defect or defects shall be immediately given to the school. If the defects are not corrected within a reasonable time, the school of nursing may be removed from the approved list and notice thereof in writing given to it.

SEC. 15. Section 4501 of the Business and Professions Code is amended to read:

4501. (a) "Board," as used in this chapter, means the Board of Vocational Nursing and Psychiatric Technicians of the State of California.

(b) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

SEC. 16. Section 4503 of the Business and Professions Code is amended to read:

4503. (a) The board shall administer and enforce this chapter.

(b) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

SEC. 17. Section 4510.1 of the Business and Professions Code is amended to read:

4510.1. An applicant for license by examination shall submit a written application in the form prescribed by the board. Provided that the application for licensure is received by the board no later than four months after completion of a board approved psychiatric technician program and approval of the application, the board may issue an interim permit authorizing the applicant to practice all skills included in the permittee's basic course of study, pending the results of the first licensing examination, or for a period of nine months, whichever occurs first.

A permittee shall function under the supervision of a licensed psychiatric technician or a registered nurse, who shall be present and available on the premises during the time the permittee is rendering professional services. The permittee may perform any function taught in the permittee's basic psychiatric technician program.

If the applicant passes the examination, the interim permit shall remain in effect until an initial license is issued by the board or for a maximum period of six months after passing the examination, whichever occurs first. If the applicant fails the examination, the interim permit shall terminate upon notice by certified mail, return receipt requested, or if the applicant fails to receive the notice, upon the date specified in the interim permit, whichever occurs first. An interim permittee shall not use any title or designation other than psychiatric technician interim permittee or "P.T.I.P."

SEC. 18. Section 4511 of the Business and Professions Code is amended to read:

4511. An applicant for a psychiatric technician's license shall have the following qualifications:

- (a) Be at least 18 years of age.
- (b) Have successfully completed an approved general education course of study through the 12th grade or the equivalent thereof as determined by the board.
- (c) Have successfully completed (1) a prescribed course of study and training in a school approved by the board, which course of study and training shall combine the nursing knowledge and skills necessary for the care of any ill person and in addition those special skills necessary for the care of the mentally disabled and the developmentally disabled, or (2) a course of study and training which, together with previously acquired training or experience, is determined by a school approved by the board to be equivalent in academic credits to its regular program for psychiatric technician training, or (3) have completed a course of study and training which in the opinion of the board is equivalent to the minimum requirements of an approved program for psychiatric technicians in the state. Clinical inpatient experience shall be an integral part of any such prescribed or equivalent course of study and training.
- (d) Have committed no act which, if committed by a licensed psychiatric technician, would be grounds for disciplinary action.

SEC. 19. Section 4511.2 of the Business and Professions Code is amended to read:

4511.2. The board shall deny the application for approval made by, and shall revoke the approval given to, any psychiatric technician school that does not give to student applicants credit, in the fields of nursing and psychiatric technician practice, for previous education and the opportunity to obtain credit for other acquired knowledge by the use of challenge examinations or other methods of evaluation.

The board shall prescribe, by regulation, the education for which credit is to be given and the amount of credit that is to be given for each type of education, including the amount of credit to be given to a psychiatric

technician assistant, a certified nurse assistant, a nurse assistant who has provided direct nursing services in health facilities, and an applicant who has successfully completed equivalent courses offered by a secondary school that is accredited by the State Department of Education in any state or by a nationally recognized, regional accrediting body. These courses shall be assessed for equivalency by the psychiatric technician school.

SEC. 20. Section 4521.2 of the Business and Professions Code is amended to read:

4521.2. (a) If a psychiatric technician has knowledge that another person has committed any act prohibited by Section 4521, the psychiatric technician shall report this information to the board in writing and shall cooperate with the board in furnishing information or assistance as may be required.

(b) Any employer of a psychiatric technician shall report to the board the suspension or termination for cause, or resignation for cause, of any psychiatric technician in their employ. In the case of psychiatric technicians employed by the state, the report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194. The reporting required herein shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (d), and shall not be subject to discovery in civil cases.

(c) An employment agency or nursing registry shall report to the board the rejection from assignment of a licensed psychiatric technician by a health facility or home health care provider due to acts that would be cause for suspension or termination as described in subdivision (d).

(d) For purposes of this section, “suspension, termination, or resignation for cause” or “rejection from assignment” are defined as suspension, termination, or resignation from employment, or rejection from assignment, for any of the following reasons:

(1) Use of controlled substances or alcohol to such an extent that it impairs the licensee’s ability to safely practice as a psychiatric technician.

(2) Unlawful sale of controlled substances or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Falsification of medical records.

(5) Gross negligence or incompetence.

(6) Theft from patients or clients, other employees, or the employer.

(e) Failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed ten thousand dollars (\$10,000) per violation.

(f) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this chapter.

(g) The board shall implement this section contingent upon necessary funding being provided in the annual Budget Act.

(h) For purposes of this section, “employer” includes employment agencies and nursing registries.

SEC. 21. Section 4530 of the Business and Professions Code is amended to read:

4530. The board shall prepare and maintain a list of approved schools which offer an approved program for psychiatric technicians.

SEC. 22. Section 4531 of the Business and Professions Code is amended to read:

4531. The course of instruction of an approved school shall consist of not less than the number of hours or semester units of instruction required for the other program administered by the board. The subjects of instruction shall include the principles of the care of the mentally disabled and the developmentally disabled. Clinical inpatient experience shall be an integral part of that prescribed or equivalent course of study and training. The experience shall be obtained in a state hospital, except where the board finds that the requirement is not feasible due either to the distance of a state hospital from the school or the unavailability, as determined by the State Department of Developmental Services or the State Department of Mental Health, of state hospital clinical training placements.

SEC. 23. Section 4532 of the Business and Professions Code is amended to read:

4532. The board shall provide for the periodic inspection or review of all psychiatric technician schools in this state. Written reports of the inspection or review shall be made to the board, which shall then approve the psychiatric technician schools that meet the standards prescribed by it.

If the board determines from a report that any approved school is not maintaining its prescribed standards, it shall immediately give the school a notice in writing specifying the defect. If the defect is not corrected the board shall, after written notice, remove the school from the approved list.

SEC. 24. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.